

Reserved Water Rights Compact Commission

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Reserved Water Rights
Compact Commission History

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In Montana, federal reserved water rights have been claimed for seven Indian reservations, for allotments for the Turtle Mountain Chippewa Tribe, and for federal lands within the State (national parks, forests, national wildlife refuges, and federally designated wild and scenic rivers).

A federal reserved water right differs from the state appropriative water rights familiar to most members of the public. Under Montana water law, which incorporates the prior appropriation doctrine (first in time, first in right), the right to water depends on the priority of a person's claim. The water user is limited to appropriating only that amount that can be put to beneficial use at a specific time. If the state right is not used over a certain period of time it can be lost by abandonment. Since the passage of the Montana Water Use Act in 1973, the state has been working on an adjudication process to finalize all water rights prior to that date in state Water Court. For those wishing to obtain post-1973 water rights, the law established a permit system administered by the State Department of Natural Resources and Conservation (DNRC).



Federal reserved water rights were created when the United States Supreme Court made the *Winters v. United States* (206 U.S. 564 [1908]) decision about a Fort Belknap Indian Reservation water claim. In the *Winters* decision, the Supreme Court held that when Congress or the President sets aside land out of the public domain for a specific federal purpose, such as an Indian reservation, National Park, or a National Forest, a quantity of water is reserved which is necessary to fulfill that specific federal purpose. A federal reserved water right has a priority date as of the date the land was withdrawn and the reservation was created. The rights cannot be lost through non-use.

Quantification, or the determination of the size of a federal reserved water right for the state adjudication process, requires the Montana Reserved Water Rights Compact Commission (RWRCC) to reach an understanding with the federal agency holding the water right about the purpose for which the specific federal reserve was created. The parties must then come to agreement as to how much water is necessary to satisfy the purpose of the reserve. The resulting agreement must be signed by the negotiating parties, the appropriate federal officials, pass through the Montana legislature, (and the U.S. Congress, in some cases) and go to the Water Court for incorporation into a final decree for the specific water basins involved.

WATER POLICY INTERIM
COMMITTEE. 2013-14

October 29, 2014

Exhibit 9